International Alliance of Theatrical and Stage Employees Local 592 (Saratoga Performing Arts Center, Inc.) *and* Winston Goodloe, William A. Thomas, and Paul Peter Koval. Cases 3-CB-3848-1, 3-CB-3848-2, and 3-CB-3848-3

May 2, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On August 31, 1982, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Charging Parties filed exceptions and a supporting brief, and Respondent filed a brief in opposition to the exceptions of Charging Parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

[1] Charging Parties have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We agree with the Administrative Law Judge that Respondent and SPAC established an exclusive hiring hall, and that Respondent operated the hiring hall according to objective criteria. In doing so, however, we do not adopt the Administrative Law Judge's statement that the General Counsel may not attempt to prove the existence of an exclusive hiring hall by relying on evidence arising outside of the 10(b) period. It is well-established that such evidence may be used "to shed light on the true character of matters occurring within the limitations period." *Local 1424 Machinists (Bryan Mfg.)* v. *NLRB*, 362 U.S. 411, 416 (1960).

Additionally, the Administrative Law Judge stated that it is only with "great circumspection" that the Board should consider the absence of written rules and standards to be a factor in determining whether a hiring hall has been operated according to objective criteria. The Board has stated, however, that the absence of such written rules and standards, while not constituting a *per se* violation of the Act, is a factor to be weighed in the analysis. *Laborers Local 394 (Building Contractors)*, 247 NLRB 97, fn. 2 (1980). We therefore disavow the Administrative Law Judge's statement to the extent that it can be construed to mean that the absence of written rules and standards should not be such a factor.

We also agree with the Administrative Law Judge that Respondent did not violate Sec. 8(b)(1)(A) and (2) in connection with its referrals to the Universal job. However, we do not adopt his statement that the General Counsel must establish, as an "essential" element of a violation, that the hiring hall arrangement was exclusive. The Board has found that a union, under certain circumstances, may violate Sec. 8(b)(1)(A) in connection with the operation of a nonexclusive hiring hall. See *Plasterers Local 121 (Associated Building Contractors)*, 264 NLRB 192 (1982); *Operating Engineers Local 4 (Carlson Corp.)*, 189 NLRB 366 (1971).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me in Albany, New York, upon a consolidated unfair labor practice complaint[1] issued by the Regional Director for Region 3 of the National Labor Relations Board and amended at the hearing, which alleges that Respondent International Alliance of Theatrical and Stage Employees Local 592[2] violated Section 8(b)(1)(A) and (2) of the Act. More particularly, the consolidated complaint alleges that Respondent (herein sometimes called Local 592 or the Union) discriminatorily referred individuals for employment to the Saratoga Performing Arts Center (SPAC) and to Universal City Studios Incorporated (Universal) based on considerations of membership in the Union, referred individuals without reference to objective standards or criteria and on the basis of personal friendship, and denied referrals to Charging Parties William A. Thomas, Winston Goodloe, and Paul Peter Koval because of union membership considerations, personal friendship, or intraunion opposition to Respondent's leadership, or because they had threatened to file charges with the Board. Respondent denies that it has an exclusive referral agreement or arrangement with any employer, denies that it referred or failed to refer individuals for employment on the basis of improper considerations, and states that the Charging Parties in this case were refused employment by SPAC during the 1981 summer season because of various acts of misconduct on their part, either at or away from SPAC premises, during

[1] The principal docket entries in this case are as follows:

Charges filed against the Union by William A. Thomas and Winston Goodloe in Cases 3-CB-3848-1 and 3-CB-3848-2 on June 10, 1981; charge filed against the Union by Paul Peter Koval on June 23, 1981; consolidated complaint issued against Respondent by the Regional Director for Region 3 on July 22, 1981; Respondent's answer filed on July 29, 1981; hearing held in Albany, New York, on May 12 and 13, 1982; briefs filed by the General Counsel and Respondent with me on or before June 21, 1982.

[2] Respondent admits, and I find, that the Saratoga Performing Arts Center, Inc. (SPAC), is a New York corporation which maintains its principal place of business in Saratoga Springs, New York, where it is engaged in the business of operating a cultural and performing arts center. During the course of the year preceding the issue of the consolidated complaint herein, SPAC derived from this business gross revenues in excess of $1 million and purchased at this place of business directly from points and places located outside the State of New York goods, materials, and services valued in excess of $50,000. Accordingly, SPAC is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Respondent also admits that Universal City Studios Incorporated, a California corporation which produces motion pictures in Universal City, California, is a statutory employer. Respondent is a labor organization with the meaning of Sec. 2(5) of the Act.

the 1980 season. Upon these contentions the issues herein were joined.[3]

I. THE UNFAIR LABOR PRACTICES ALLEGED

Since 1965, SPAC has produced summer programs consisting of classical music, ballet, rock concerts, and dramatic performances at Saratoga Springs. These performances take place on the premises of a park which SPAC leases from the State of New York. At this location there is both an outdoor concert stage and ampitheatre, as well as a separate theatre for dramatic performances known as the John Houseman Theatre. The events involved in this litigation pertain to the manning of the crews for the concert stage.

Since its inception, SPAC has had a contract with Local 592 covering stagehands who work both on the concert stage and at the theatre. The most recent contract ran from June 1980 until June 1, 1982. The work in question is seasonal, beginning about May 1 and ending about Labor Day. Employment is also sporadic in that the size and number of crews employed on any given day vary with the type of performance which has been engaged. As a result most, if not all, of the employees in the bargaining unit have other jobs or are college or graduate students.

The Union in question is a small organization with no full-time officials or employees. It has no regular office or hiring hall. In 1981 it had about 15 members, most of whom held regular jobs outside the Union's jurisdiction and outside the trades here in question. In any given summer about 40–50 individuals are employed by SPAC in the bargaining unit, a fact which suggest that most of the individuals employed in the bargaining unit over the years are not and have not been members of Local 592. Moreover, SPAC is Local 592's only regular account. On rare occasions, as in the spring of 1981 when Univeral came to Saratoga Springs to shoot certain sequences of a motion picture entitled "Ghost Story," additional employment opportunities may arise within the Union's jurisdiction. Aside from these unusual events, Local 592 is limited to representing SPAC's summer stagehands.

Patrick LaVigna is the business agent for Local 592. He is regularly employed in New York City as a stagehand for ABC. However, he is a resident of the Saratoga area and, during the summer months, is employed by SPAC. All parties agree that LaVigna is a supervisor within the meaning of the Act in that he can hire, fire, and discipline SPAC employees. He is compensated under the union contract as a department head and reports directly to SPAC's production manager, David Carlucci. Carlucci is a salaried management official and a year-round employee of SPAC, who in turn reports to SPAC's executive director, Herbert A. Chesbrough. It is LaVigna who negotiates contracts with SPAC on behalf of Local 592.

LaVigna has a variety of duties, the most important of which is to call in crews for daily assignments. The contract between Respondent and SPAC specifies that the "yellow card" will be strictly adhered to, but neither the contract nor the record evidence defines the meaning of "yellow card" with any degree of precision. The size of the stage crew is effectively determined by the visiting performer or company of performers, who relate their needs directly to Carlucci. Carlucci then informs LaVigna of the number of men desired, their reporting time, and the general nature of the work to be performed. It is up to LaVigina to summon crewmembers each day. Actual employment of any given crewmember extends only for the length of the daily call which he has received.

The contract between the parties provides:

> All calls, specifying number of crew, hour and duration of call, shall be authorized only if issued from Employer's Manager's office to Union's Business Agent or his designee, who shall supply to Employer a list of all stagehands and their classification. Such list to be furnished each year.

Stagehands are generally classified as electricians, carpenters, or general hands, although these classifications do not suggest hard and fast limitations on the nature of the duties they are expected to perform on any given day. The contract permits the designation of three department heads at premium pay, although these designations are also not always fully descriptive of what responsibilities the so-called heads are expected to perform. During the season, SPAC normally uses between 6 and 18 stagehands each day, although during the ballet portion of the season SPAC has used as many as 32 stagehands in a call.

LaVigna maintains a small office in the carpentry shop at the Performing Arts Center. At this place he has a list of all past employees who are available for call, as well as other prospective stagehands whose names have come to his attention from any source. From this list he makes daily calls to obtain a crew or crews. LaVigna complained that he frequently has to make several calls to find a single crewmember who is available to work. This problem arises because calls are usually made upon short notice, are frequently made for shifts having erratic hours,[4] and are made to individuals who must rearrange the schedules of their regular employment in order to report to work at SPAC. LaVigna makes up the daily payroll report, turns it in to the SPAC office, and gives general directions on the work to be performed to department heads and to other employees. From time to time, LaVigna is not present. On these occasions, his functions had been performed by the late union president, Arthur Carrol, also a longtime SPAC employee. After Carroll's death, fill-in duties for LaVigna have been performed by Lawrence Eschelbacher. As part of the daily work call, LaVigna normally designates the heads. He usually designates himself as a head. During Carroll's lifetime, he normally designated Carroll and, in

[3] Certain errors in the transcript have been noted and are hereby corrected.

[4] A call on a given night may last from 7 until 10 p.m. On other occasions, especially between theatrical companies or during the changeover between shows being performed by a resident company, a shift may last up to 20 hours and be followed immediately by another 20-hour shift.

1979 and 1980, rotated the third head or premium pay designation between Charging Party Paul Peter Koval and Koval's older son.

LaVigna testified that the size of each day's crew is determined by the workload. He selects crewmembers on the basis of employees who are qualified, the ones who have been there the longest, and their availability. He stated that qualifications of stagehands are determined by him on the basis of his observations of their work with the advice and assistance of department heads.

Almost everyone who testified asserted that, at least until 1979, when former employee Pat Carroll, son of Arthur Carroll, returned to work for SPAC, seniority was observed in practice in making crew calls.[5] Employees who first start to work for SPAC receive comparatively few crew calls. As they return to SPAC each summer, the number of calls they receive increases because, to use Thomas' expression, they "move up." In fact, one of the Charging Parties referred to his asserted seniority ranking by number. However, Thomas and Goodloe also testified that, on occasion in 1979 and 1980, they failed to receive calls they felt that they should have received on the basis of their seniority.[6] Goodloe added an additional complaint; namely that from time to time people received calls in preference to him who were, in his judgment, not as experienced in the industry as he was.

Charging Party William A. Thomas is a member of the New York bar and currently maintains an office for the practice of law in the Saratoga area. He started working for SPAC in 1974 when he was in college and continued to do so until 1980. In the fall of 1977, Thomas entered law school. He graduated in 1980, took the bar exam in that year, and failed the exam. He took it again in 1981, passed the exam, and was admitted to practice in June 1981. Thomas testified that he received progessively more crew calls as his seniority increased and that, by 1978, he was the "fifth man" in seniority at SPAC. Like most SPAC stagehands, including many who had worked for SPAC for several years, Thomas was not a union member. Like all SPAC stagehands, he contributed 3 percent of his earnings to Local 592 by way of payroll deductions, although there is no indication in the record that he ever signed a formal checkoff agreement.

Thomas was apparently satisfied with Respondent's hiring practice until 1979, when Pat Carroll returned to work for SPAC and was made the fifth man, thereby demoting Thomas to the status of sixth man. He claims that he was denied calls in 1979 that he should have received, but the record is barren of any proof of this fact or of any objective evidence as to the reason he failed to receive calls other than Thomas' naked assertion. He further testified that he once heard former Union President Carroll say that union members would work first.[7]

In a private conversation in the summer of 1980 with fellow employee Michael Murray, Thomas stated that he was unhappy with the referral practices and that, if it did not stop, he would be forced to file charges.[8] Murray's reply was "Do what you have to do." In fact, Thomas did not file charges until a year later after he had been permanently denied employment.

In July 1980, Thomas was involved in an incident which caused a disciplinary investigation by LaVigna. SPAC keeps cases of beer in a section of a storage room, principally for the benefit of theatrical and musical performers. The area where the beer is stored is sectioned off from the rest of the building by a 7-foot interior wall which is topped by strands of barbed wire. The only regular access to the beer storage area is through a door which is normally locked. Keys to the door are kept by Carlucci, his assistant, and members of the guard force. From time to time, Carlucci has made beer available on hot nights to members of the stage crew. He instructed them that, if they wanted beer, they should ask him, his assistant, or the guard on duty. Instead of doing so, Thomas and other employee took it upon themselves to climb over the interior wall of the storage room, remove a six-pack of beer, and use it for their own purposes. When LaVigna learned that beer was missing, he began questioning employees concerning the missing items. Before getting around to questioning Thomas, the latter went to Carlucci, admitted taking the beer, and apologized. Carlucci said not to worry about it but cautioned Thomas not to let it happen again. He told Thomas that if in the future he wanted beer he should ask.

Thomas and other General Counsel witnesses testified that they had implied permission to climb over the wall of the storage room and remove beer at their pleasure. Carlucci testified that they had no such permission and I credit his testimony. The net effect of this finding is to cast a cloud over the candor and credibility of Thomas as a witness, a finding which is reinforced by observa-

[5] Pat Carroll worked for SPAC for a number of years antedating the employment of two of the three Charging Parties. It was their feeling that, when Carroll returned to the SPAC payroll, he should not resume the seniority ranking, however informal it might be, which he enjoyed during his first tour of duty.

[6] The 10(b) period in this case dates back to December 10, 1980, so any evidence relating to calls out of turn in 1979 and 1980 cannot form the basis for a finding of a violation.

[7] This reported statement by Carroll was the subject of vigorous objection by Respondent on the basis of the dead man's rule. Unlike many States, the Board does not have a dead man's rule and will accept testimony of conversations between witnesses and individuals who have died. However, it will do so only with great circumspection and rightly so, since the other party to the asserted conversation cannot be summoned to corroborate, modify, or deny what was said. Art Carroll died in March 1981. The statement attributed to him by Thomas took place at some unspecified time and place long before the 10(b) period. It conflicts with other record evidence, including testimony given by Thomas and other General Counsel witnesses, that nonmembers were accorded seniority without reference to union membership and that the bulk of the employees hired by SPAC were nonmembers. The statement was also reported by a witness whose credibility is in serious question because of other facets of his testimony. Accordingly, I decline to premise any finding in what Art Carroll supposedly told Thomas concerning preference to union members. The same determination applies to a similar statement which Carroll assertedly made in the fall of 1979 to Goodloe, a witness whose credibility is also in doubt.

[8] At the time Thomas made this statement to Murray, the latter was a union member but held no office in the Union. Sometime later, Murray was elected vice president and later assumed the presidency of the Union upon the death of Art Carroll. This statement by Thomas, which occurred outside the 10(b) period, cannot constitute either actual or constructive notice to the Union of a threat to file charges.

tions of demeanor and by the argumentative and evasive character of some of his other testimony.[9]

After Thomas' involvement came to light, LaVigna, Carlucci, and Chesbrough discussed among themselves what, if anything, they should do about the incident. They reflected on the fact that Thomas was in the process of becoming admitted to the bar and that this incident was his first offense as an employee, so they decided not to take any further action.

Charging Party Winston Goodloe began working for SPAC in 1974, although he has had experience as a stagehand dating back to 1952. As a SPAC employee, he was attached principally to the carpentry department and worked mostly on the fly floor or doing rigging. During the early year of his employment by SPAC, he experienced the same employment history as did Thomas. He received a few crew calls at first and then was progressively given more calls until he worked with considerable regularity during the summer season. The record is unclear as to whether Goodloe has any regular employment during the fall and winter months.

On several occasions during his employment with SPAC, Goodloe applied to LaVigna for membership in Local 592 and was refused. Goodloe frequently complained to LaVigna and others that he was not being referred for work as often as he thought he should have been and, like Thomas, he was unhappy that Pat Carroll, upon Carroll's return to SPAC, worked ahead of him. Goodloe testified that, on one occasion in 1979, he asked LaVigna why he was not being called for work. LaVigna reportedly replied that Art Carroll did not want to hire him any longer and that union men came ahead of him. Goodloe reportedly told LaVigna that he thought that LaVigna did the hiring and that the latter should stand on his own two feet.[10]

Goodloe worked during the summer season in 1980. However, his employment status was not without problems. On the day of the first crew call, Goodloe went to the Performing Arts Center as if to go to work, although he had not been called. LaVigna asked him why he was there and Goodloe said that he came to go to work. LaVigna reminded him that he was not on call and told Goodloe he was not going to work. Goodloe threatened to file NLRB charges unless he was hired. After a brief conference with others LaVigna informed Goodloe he could go to work. Goodloe continued to work that day and throughout the summer, although he was not hired as frequently in 1980 as he thought he should have been.

During the 1980 season, Goodloe and his 19-year-old son were arrested by New York State Police for growing marijuana in Goodloe's greenhouse. Goodloe admitted during the hearing in this case that, in fact, he had been growing it for "medicinal purposes," having heard that the use of marijuana was good for the cure of headaches which he had been experiencing. He also testified that he had not actually used marijuana for his headaches so that he had no first-hand knowledge of whether the cure really worked.

The news of Goodloe's arrest was carried in several local papers and an article reporting the incident was clipped and posted at the carpentry office at SPAC. The article reported that Goodloe had pleaded guilty of possession of marijuana and had been fined $1,000. Goodloe testified that, in fact, the charges had been dismissed, ostensibly because of a defect in the search warrant. The discrepancy between the newspaper article and Goodloe's testimony was never resolved. In any event, the fact of his arrest was common knowledge at SPAC but no disciplinary action arose because of it during the 1980 season. At the conclusion of the 1980 season, Goodloe obtained from Chesbrough a letter of recommendation addressed "To Whom it May Concern," in which Chesbrough described Goodloe's abilities and devotion to duty in glowing terms and offered to serve as an employment reference.

Paul Peter Koval worked for SPAC since nearly its inception. Normally he was assigned to the electrical department. He is a state-certified electrician. For 3 or 4 years prior to his termination in July 1980, he served periodically as electrical department head. Since 1976, Koval has been a member of Local 592. His regular employment for the past 25 years has been that of a rural mail carrier.

In July 1980, at the end of the first week of the performances of the New York City Ballet, Koval noticed that his paycheck was less than he expected so he went to LaVigna's home to complain. LaVigna explained that at all times Art Carroll had been the head electrician, that Koval had occupied the third head slot permitted by the contract, and that LaVigna was in effect rotating him in that premium pay spot with Koval's son. He stated that Koval's title was technically that of assistant electrician. Koval was angry. He told LaVigna that, if Carroll was going to carry the title of head electrician, he should get out on the stage and fulfill the duties of head electrician. He also told LaVigna that he was going to quit.[11]

About a week later, following a Sunday evening performance, Koval packed his tools in the trunk of his car and left. LaVigna was not present at the SPAC premises and Koval told none of the other employees that he was in fact quitting or where he was going. Koval owned many of the electrician's tools that were in daily use at SPAC so his departure left SPAC without an assistant head electrician and short of tools. Thereafter, Koval did not work for the balance of the 1980 season. He insists that he did not "quit" but just "left." However, he was

[9] For example, Thomas, a longtime employee of SPAC, testified, *inter alia*, that he had no knowledge of any SPAC policy respecting the use or possession of drugs on the premises. In fact, SPAC has a strict policy against the use or possession of narcotics by anyone, including customers, on its premises. It has made public statements to this effect and has a longstanding practice of cooperation between its security guards and the New York State Police to suppress this practice. SPAC security guards are instructed to arrest anyone trying to bring drugs on the premises of the Performing Arts Center.

[10] Goodloe could not recall what union men were being referred ahead of him in this instance.

[11] There is some dispute as to how Koval couched his threat or notice to quit. According to Koval, he told LaVigna that he would be leaving in a week's time. LaVigna denies that Koval gave him any specific notice, stating only that he was going to quit. He further testified that he gave Koval's threat little weight since Koval threatened to quit almost every season. With respect to the sepcific notice in question, I credit LaVigna and note that, when Koval in fact walked out, it was a surprise to everyone, both in management and in the Union.

unable to differentiate between the two terms. Three days later, Koval tried to explain his actions to Chesbrough, but Chesbrough told Koval he could not help him because the Union was responsible for hiring.

In September 1980, Koval wrote a letter of protest to Walter F. Diehl, an International president of IATSE who makes his office in New York City. In the letter, Koval complained to Diehl about Art Carroll and LaVigna. He objected to the fact that Local 592 had only one meeting in 1980 and normally had no more than two meetings in any year. He further objected that Local 592 had taken no action on applications for membership by several employees who had 5 or 6 years' employment at SPAC. He told Diehl that one SPAC employee had to threaten the Local with the filing of NLRB charges in order to obtain employment in 1980. He objected to having 3 percent of his wages deducted for dues and also complained about the application of the priority of seniority system in making work calls.[12] Koval received no direct reply from Diehl. His letter was referred to the Local and read at a union meeting on May 17, 1981. Koval got a "hard time" at the meeting from some of his brother unionists for writing to the International, but the Local took no action against him because he had registered the complaint.

Late in 1980, LaVigna received word that Universal Studios was going to film a portion of the movie "Ghost Story" in the Saratoga area. Universal notified LaVigna that it would be bringing with it the bulk of its filming crew, who are members of an IATSE local or locals in southern California. However, he was also informed that there would be some local hiring. LaVigna called a meeting of Local 592 to find out who would be available to work for Universal and who would not be available. Since the permanent employment situations of some Local 592 members are different in the winter than in the summer, LaVigna anticipated some difficulty in finding qualified employees for Universal. At a meeting held on December 21, 1980, Koval stated that he did not want to work on the Universal job unless he was really needed.[13] Others gave varying replies to LaVigna's inquiry concerning availability for employment.

On the night before the Universal job was to begin, Art Carroll called Thomas and aksed him if he was available for work. Thomas told Carroll he could work 1 day but that he would not be available for steady employment because he was studying for the bar exam. Thomas reported to work the following morning and was hired. Shortly thereafter, LaVigna referred Goodloe to the Universal job. Goodloe had some trouble on the job with an electrician shop steward from another IATSE local, who insisted that Goodloe produce a union card before coming to work. Goodloe had no card and was ultimately hired by Universal in another position. He worked throughout the 3 months that Universal was in the Saratoga area and has one of the highest records of earnings by any locally hired employee. Koval was offered a referral at the end of the Universal project loading trucks but turned it down, complaining to Michael Murray, the new president, that he had not been referred until all of the "gravy" work was done.

Records introduced into evidence indicate that a majority of the locally hired employees on the Universal job were not members of Local 592. Some of these employees were nonunion and others were members of other IATSE locals in the Albany area. The list of earnings of locally hired individuals discloses no pattern with respect to whether the aggregate earnings of Local 592 members exceeded or was less than the earnings of others whom Universal hired. There was no formal written or oral agreement between Local 592 and Universal requiring the latter to obtain its locally hired employees through the Union. LaVigna testified that, from time to time, the Universal production manager would "throw him a bone." He also testified that anyone was free to approach Universal and seek employment without any referral or clearance from Local 592. I credit this testimony, as it is borne out by the hiring pattern which emerged on the Universal project and was uncontradicted by other than snatches of hearsay testimony offered by unreliable witnesses.

When the 1981 SPAC season came around, none of the Charging Parties was rehired. Thomas left a note at LaVigna's house to inform him that he was available for the 1981 season. Koval wrote LaVigna a letter to the same effect. On May 2, when SPAC began its "dewinterizing" efforts, Thomas went to the Performing Arts Center and spoke personally with LaVigna. He again told LaVigna that he was available for employment. LaVigna asked him why he left the Universal job, since he had missed an opportunity to make a lot of money. Thomas replied that he had informed Art Caroll (who, in the meanwhile, had died) that he would not work more than 1 day for Universal, but he argued that this matter had nothing to do with working for SPAC. LaVigna said that he would speak with Carlucci concerning Thomas' application to see if he could put him on as an extra man just for the day. Carlucci objected, saying that, in order to accommodate Thomas, SPAC would have to knock off one of the employees who had been called to work.

Later in the month, Thomas approached Carlucci for employment. Carlucci said that he would take the request up with LaVigna. However, nothing came of Carlucci's efforts. On June 10, Thomas filed one of the charges in the instant case.

LaVigna testified that, after the publicity concerning Goodloe's narcotics arrest, he and Carroll had decided

[12] One disagreement which Koval did not express to Diehl was a complaint he had taken up with LaVigna in 1979; namely, the alleged use of "no shows." Koval had complained, apparently without success, that many times men whose names appeared on the crew call would not show up, even though their services were needed and they were apparently being paid for attendance. Koval's objection was that others who were working were left short-handed and had to work with an undermanned crew.

[13] Koval testified that he stated that he would work on the Universal job "if needed." The minutes of the meeting recount that Koval expressed his intentions as noted above, and others who attended the meeting also testified that Koval stated that he did not want to work unless he was really needed. I will rely on the minutes of the meeting, as corroborated, but note that the difference between the credited versions of Koval's remarks and the statement he claims to have made is in degree but not in kind. Both indicate that he told LaVigna that he really was not particularly interested in working on the Universal job.

to permit Goodloe to work the balance of the season but not thereafter. I credit LaVigna's testimony that he told Goodloe at the beginning of the 1981 season that he did not want him back because he was "working grass." Goodloe had another story. He testified that in May 1981 he spoke with LaVigna and was told that the Universal electrical shop steward had phoned LaVigna and had told him that Goodloe did not have a union card. LaVigna reported to Goodloe that he had told the shop steward that, if there was any way he could get Goodloe a card over the weekend, he would do so in order that Goodloe might return to work on Monday. Goodloe testified that LaVigna was mad at him for having engendered a phone call from the Universal shop steward.

In mid-May, Goodloe phoned International President Diehl in New York to complain about the failure of the Local to refer him for work and about the Universal production manager. Diehl reportedly inquired of Goodloe why he had been referred out at all, inasmuch as he did not have a card. Goodloe replied that this was the way things were done in Saratoga. Diehl then asked Goodloe why he did not have a union card, and Goodloe reportedly replied that he had applied for a card but had been turned down. He also told Diehl that he thought he would file charges with the Board. Diehl replied that filing charges was not a bad idea.

On June 4, 1981, Goodloe went to the Performing Arts Center and spoke with LaVigna. LaVigna was mad at him for calling Diehl, reportedly accusing Goodloe of "upsetting the apple cart." He reportedly told Goodloe that he would no longer be referred. Goodloe again threatened to file charges. LaVigna told him to "suit himself," recounting that Koval had gone to the Board and it had not done him any good. On June 6, Goodloe solicited and obtained a letter of reference from Carlucci. Goodloe drafted the statement in question, addressed "To Whom it May Concern," and presented it to Carlucci for signature. Carlucci signed it. The one-paragraph note said that Goodloe was a hard-working, dedicated, knowledgeable, and efficient member of the stage crew. On June 10, Goodloe also filed a charge in this case.

Early in May 1981, Koval worked 2 days assisting in the "dewinterizing" of the Performing Arts Center. Shortly thereafter, at a union meeting, Koval was heard saying that he had brought to the attention of Carlucci the fact that a load potential had been plugged into the wrong electrical unit and had also pointed out some other improper electrical work which he had noticed. Murray's reply to Koval's remarks was that it was the concensus of opinion among union members that Koval should take the rest of the season off and that Koval's 17-year-old son should not be employed at SPAC. (Another of Koval's sons was employed by SPAC and on occasion serves as department head.) A few days later, during a six-man call, Koval went to the Performing Arts Center and saw LaVigna. LaVigna told Koval that he would have to go home because SPAC had cut one man from the crew. Koval protested that, even with a one-man cut, he should be allowed to work because he had seniority over others who were working. LaVigna merely walked away from him. LaVigna testified that he learned early in the 1981 season that SPAC had a policy to the effect that any man who quits work may not return to SPAC. His testimony was corroborated by Carlucci, who testified that Koval would not be hired by SPAC because of the abrupt manner in which he quit in the summer of 1980.

II. ANALYSIS AND CONCLUSIONS

A. *The Status of the SPAC-Local 592 Hiring Arrangement*

SPAC and Local 592 have no formal agreement requiring all stagehand applicants to be referred by Local 592. The contract between these parties has an inartfully worded provision which states that "all calls, specifying number of crew, hour and duration of call, shall be authorized only if issued from EMPLOYER'S Manager's office to UNION'S Business Agent or his designee, who shall supply to EMPLOYER a list of all stagehands and their classifications. Such list is to be furnished each year." Since the contract does not state that no one may be hired except upon referral or clearance by Local 592, the General Counsel, in establishing an essential prerequisite to his illegal referral complaint, argues that the practice of the parties has established such an arrangement. In so arguing, he may not seek a finding premised upon any evidence antedating December 10, 1980, when the 10(b) period began to run. Since none of his principal witnesses—Koval, Thomas, or Goodloe—worked during 1981, their evidence of how the system worked cannot form the basis for a finding.

The essence of the General Counsel's contention is that Local 592 exercises control over SPAC's hiring by virtue of the dual role played by Patrick LaVigna, who is business agent of Local 592 and an admitted agent of Respondent. In addition to being a business agent, LaVigna is an admitted supervisor of SPAC within the meaning of Section 2(11) of the Act and has a variety of supervisory duties to perform on behalf of his employer. One of these duties is making the crew calls by which stage crews are assembled on a daily basis. The fact that LaVigna is an agent of SPAC does not prevent him from being an agent of Respondent as well, since a hiring authority can be a dual agent. *Master Stevedores Assn.*, 156 NLRB 1032 (1966); *Daugherty Co.*, 147 NLRB 1295 (1964); *Plumbers Local 17 (FSM Mechanical)*, 224 NLRB 1262 (1976). However, such a dual agency status can, on occasion, create difficulties in determining which principal LaVigna is serving when he performs a given act, since LaVigna not only exercises the power of calling employees but also the management responsibility of getting the job done. I conclude that LaVigna is a dual agent and acts, *inter alia*, on behalf of Local 592 in making crew calls.

B. *The Legality of the SPAC-Local 592 Hiring Arrangement*

Both the testimony and argument in this case speak of referrals of crewmembers for employment. Since LaVigna, the dual agent, selects employees in part as a supervisor on behalf of SPAC, no conventional referrals take place. That term more properly pertains to situa-

tions where different agents of two entities, operating at arm's length, interact to bring about the employment of an applicant. In this case, LaVigna "refers" applicants to himself. It is more accurate to state that SPAC has, in part, delegated its hiring functions to Respondent. This delegation is sufficient to bring into play the provisions of Section 8(b)(1)(A) and (2), which, under decided cases, appear far more restrictive than the correlative provisions in Section 8(a). Under Section 8(a), an employer may discharge (or refrain from hiring) an employee for good reason, bad reason, or no reason at all, so long as the reason does not relate to union or protected activities. The Board has gone much further with respect to a union's obligation in making referrals under an exclusive agreement. In such situations, a union must also refrain from being arbitrary and must base its referrals on what are called "objective" considerations. *Laborers Local 394 (Building Contractors)*, 247 NLRB 97 (1980); *Operating Engineers Local 18 (Ohio Contractors)*, 204 NLRB 681 (1973); *Laborers Local 252 (Seattle & Tacoma Chapters, AGC)*, 233 NLRB 1358 (1977).

However, the Board has received no roving commission from Congress to supervise the operation of hiring halls or hiring arrangements, and, when it has attempted to legislate in this area beyond the parameters allowed by Congress, the Supreme Court has not been reluctant to pull in the reins. For example, in *Mountain Pacific Chapter, AGC*, 119 NLRB 883 (1957), the Board announced a rule of decisions in which it stated a *per se* rule of illegally having certain narrowly rebuttable presumptions, and by them attempted to establish rules and regulations governing the operation of exclusive hiring halls.[14] The Supreme Court gave these regulations short shrift. *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961). In so doing, the Court made the following observations:

> It may be that the very existence of the hiring hall encourages union membership. We may assume that it does. The very existence of the union has the same influence. When a union engages in collective bargaining and obtains increased wages and improved working conditions, its prestige doubtless rises and, one may assume, more workers are drawn to it. When a union negotiates collective bargaining agreements that include arbitration clauses and supervises the functioning of those provisions so as to get equitable adjustments of grievances, union membership may also be encouraged. The truth is that the union is a service agency that probably encourages membership whenever it does its job well. But, as we said in *Radio Officers* v. *Labor Board, supra*, the only encouragement or discouragement of union membership banned by the Act is that which is "accomplished by discrimination." P. 43.
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> It may be that hiring halls need more regulation than the Act presently affords. As we have seen, the Act aims at every practice, act, source or institution which in fact is used to encourage and discourage union membership by discrimination in regard to hire or tenure, term or condition of employment. Perhaps the conditions which the Board attaches to hiring-hall arrangements will in time appeal to the Congress. Yet, where Congress has adopted a selective system for dealing with evils, the Board is confined to that system. . . . Where, as here, Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme.
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> We cannot assume that a union conducts its operations in violation of law or that the parties to this contract did not intend to adhere to its express language. Yet we would have to make those assumptions to agree with the Board that it is reasonable to infer the union will act discriminatorily.
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> * * * * *
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> If hiring halls are to be subjected to regulation that is less selective and more pervasive, Congress not the Board is the agency to do it. [*Teamsters Local 357 v. NLRB, supra* at 675–677.]

While the General Counsel concedes that the absence of formal, announced, written standards does not constitute a *per se* violation of the Act,[15] he argues that the lack of any written and announced rules and regulations governing this hiring arrangement is a factor to be considered in evaluating the arbitrariness of Respondent's hiring practice. Treating lack of written standards as a "factor" rather than as *per se* evidence of a violation of the Act trenches closely upon the limitations outlined by the Supreme Court in *Teamsters Local 357, supra*, and is an ap-

[14] In *Mountain Pacific, supra* at 896–897, the Board stated:

> From the final authority over hiring vested in the Respondent Union by [the employers], the inference of encouragement of union membership is inescapable.
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> * * * * *
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> We believe, however, that the inherent and unlawful encouragement of union membership that stems from unfettered union control over the hiring process would be negated, and we would find an agreement to be nondiscriminatory on its face, only if the agreement explicitly provided that:
>
> (1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements.
>
> (2) The employer retains the right to reject any job applicant referred by the union.
>
> (3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards that we deem essential to the legality of an exclusive hiring agreement.

[15] Such a concession is mandated by Board holdings in such cases as *Longshoremen ILA Local 1408 (Jacksonville Maritime)*, 258 NLRB 132 (1981), and *Laborers Local 394, supra*, if not by *Teamsters Local 357, supra*.

proach which should be taken only with great circumspection.

The General Counsel, in attacking the general operation of Respondent's hiring practice (actually the Respondent-SPAC hiring practice), notes that there are no objective standards which govern the making of crew calls. LaVigna testified that, in making crew calls, he uses a list or cards which are maintained in the SPAC carpentry office and which contain the names and phone numbers of about 50 prospective crewmembers. These names are assembled from a variety of sources—previous employees, recommendations by union members, and individuals who have written SPAC for summer employment and whose names have been given to LaVigna by Carlucci. LaVigna said that, during any SPAC season, he generally uses all of the individuals whose names are on the list. As noted previously, the size of the call each day is determined originally by the performing company, which transmits its requirements to Carlucci. Carlucci then informs LaVigna of the size and duration of the call.

LaVigna testified that, in making selections for the call, he selects "the ones that have been with me for quite so many years and they know exactly what to do. And they know what department they're in. Some go in carpenters, some go in props. And these are the help that the . . . all the time. From the very first go." When asked to repeat the basis for making crew selections, LaVigna stated that he would call "the ones that have been there. And according to the work load." When asked to describe how qualifications are determined, he stated, "We watch them work over the period of months and stuff and years. We see just how they work. In fact the whole crew is all good workers. It's pretty hard to pick out men sometimes because they're all so good. Some guys can't make it when you call them up. Other ones can. They're not always available." He noted that he relies in part on the evaluation of his department heads in determining who is qualified.

Translated into bureaucratic language, the basis of crew selection was and is seniority, ability, and availability. By any definition these are objective standards, even if they are general standards and have not been written out in legalese and posted in the carpentry room. They are also conventional standards which are commonly utilized for hiring. General Counsel witnesses generally agreed that, in practice, seniority did govern hiring at SPAC, even to the point of being able to state their seniority ranking. Indeed, the basis of their complaint about Pat Carroll is that he was improperly placed back on the seniority list, a complaint which is more in the nature of a grievance then evidence of an unfair labor practice, since at one time Pat Carroll had more seniority than either Goodloe or Thomas and Respondent had an arguable nondiscrimination basis for restoring him to his original seniority position.

With respect to ability as a basis for selection, it should be noted that stage work requires a variety of skills which all prospective crewmembers do not possess. It was and is LaVigna, acting in conjunction with department heads, who assesses the abilities and performance of crewmembers. However, he is a management official as well as a union agent and it is a basic and routine management function to make such determinations. Perhaps no other SPAC supervisor or employee is in a better position than LaVigna to make such evaluations. Following the teaching of the Supreme Court, I will not presume that he acts unlawfully or arbitrarily when he performs this function.

The problem of availability has already been touched upon. Crew calls are made on short notice, for varying durations, and for differing numbers of employees. Many cannot take time off from their regular employment for every call, yet the show must go on, so others are called in their stead.

With respect to the discriminatory basis for the calls, it is undenied that the majority of the employees who work for SPAC each season are not members of Respondent. Of the three Charging Parties in this case, two applied for admission and were denied membership and the third was a member during the last 5 years of his 15-year period of employment. All received calls pretty much in order of seniority and without reference to membership or lack of membership and all "moved up" as their length of service increased. I have discredited testimony of remarks by Carroll that union members were given preference. This determination was made not only on the basis of demeanor, the general lack of credibility of the witnesses, and the remoteness of the asserted remarks, but also because the substance of the remarks in question is not borne out by the evidence of what in fact has happpened both over the years and within the 10(b) period.

It may well be that an efficiency expert or management consultant, after examining the method by which SPAC stage crews are assembled, could come forth with some cogent suggestions for improvement. However, the fact that LaVigna may not have assembled the hiring of crews in an efficient or mechanical manner, or the fact that he made mistakes and caused ruffled feelings in making certain calls, does not mean that he violated the law. It simply means that, on occasions, he may have been sloppy and unbusinesslike. Paraphrasing the language of the Supreme Court in *Teamsters Local 357, supra*, if hiring halls are to be subjected to regulation that is less selective, more pervasive, and more businesslike, Congress and not the Board is the agency to do it. For these reasons, I would dismiss so much of the consolidated complaint which alleges that Respondent violated Section 8(b)(1)(A) and (2) of the Act with respect to the general operation of the SPAC hiring procedure.

C. *The Hiring of Employees for the Universal Job*

There is no record evidence of a formal written or oral agreement between Universal and Local 592 that the hiring of short-term employees to assist in the filming of "Ghost Story" be conditioned upon referral or clearance by Local 592. The bulk of Universal's film crew was brought to Saratoga Springs from southern California and was composed of members of other IATSE locals not involved in this proceeding. Many of the locally hired crewmembers were not members of any union and some were members of other IATSE locals in upstate

New York. There is no doubt that the Universal production manager asked LaVigna to provide him qualified employees and that Lavigna tried to do so. However, the preponderance of the evidence supports LaVigna's statement that anyone was free to apply for work directly to Universal, without prior referral or clearance from Local 592, and that all that Universal did was to "throw him a bone" from time to time. Statements in the record attributable to Universal officials or to stewards from California locals insisting upon union membership before an employee could be hired are simply not evidence of any misconduct on the part of Local 592 or of any clearance or hiring arrangement to which it was a party. Accordingly, I conclude that Universal and Local 592 did not have an exclusive hiring arrangement and that this essential element of the General Counsel's complaint involving employment with Universal has not been established.

Thomas and Goodloe were two of the nonunion employees sent to Universal by Local 592. The Universal payroll of locally hired stagehands shows a large number of nonunion employees whose source of employment is not disclosed by the record. Accordingly, any contention that Local 592 gave preference to union members, even within the context of making nonexclusive referrals, has not been established, and so much of the consolidated complaint which is addressed to this issue must be dismissed.

D. *The Individual Discriminations Alleged*

1. Paul Peter Koval

Koval abruptly walked off the job in July 1980, taking with him all of his tools. He was a senior electrician at the Performing Arts Center and was the only employee who knew how to perform many of the functions to which he was regularly assigned. His departure during the height of the season left SPAC in the lurch. SPAC has a policy of not rehiring individuals who have quit. Despite a day or two of employment at the beginning of the 1981 season during the "dewinterizing" of the Center, Koval was never again called to work when LaVigna learned of SPAC's policy. In his testimony, Carlucci affirmed that Koval was *persona non grata* at SPAC because of the manner in which he quit and asserted that SPAC would not permit him to be rehired. As Koval's employment was taken out of LaVigna's hands, it was thereby removed from the responsibility of Respondent. In refraining from placing Koval's name on crew calls, LaVigna was merely wearing his management hat and carrying out a management policy which was imposed upon him by higher authority. The reason for the decision, as stated by Carlucci, was what management viewed to be Koval's misconduct as an employee. Accordingly, I would dismiss so much of the consolidated complaint which alleges that Respondent discriminatorily or arbitrarily denied referrals to Paul Peter Koval.

2. Winston Goodloe

Goodloe received regular and increasing calls from 1974 until 1980, although he complained that he missed some calls which he should have received. Early in 1980, he threatened to file charges if he were not allowed to work during the season. Apparently, his threat bore fruit, as he was called on a regular basis throughout the summer. The source of Carroll's and LaVigna's displeasure with Goodloe early in 1980 is obscure in the record. Goodloe claims that it was because he wanted to be admitted to the union membership and LaVigna did not want him to become a member. This is a thin argument and is not borne out by any other evidence. Respondent's lack of animus toward Goodloe was demonstrated by the fact that, despite his lack of union membership, he worked for SPAC regularly in 1980 and was referred by Local 592 to Universal early in 1981, where he earned more money than did most of the locally hired stage crew.

The attitude of SPAC's higher management toward Goodloe has been ambivalent. Chesbrough and Carlucci gave him strong written endorsements relating to his ability and dedication to the job. On the other hand, Carlucci testified that any person who possessed or used drugs would not be employed by SPAC if such use or possession could be proved. This ban would, in his estimation, extend to the growing of marijuana, since that activity is a criminal offense in New York State. Goodloe admitted on the stand that he grew marijuana in his greenhouse and that the criminal charge lodged against him for this offense was dismissed, not because the charge was not true, but because the search warrant leading to the seizure of the plants was defective.

With respect to Goodloe, LaVigna testified that he and the late Art Carroll decided during the 1980 season, after learning of the report that Goodloe had been growing marijuana, to let Goodloe work out the season but not return the following year. He further testified that in 1981 he consulted with the new union president, Murray, and with its secretary-treasurer, Haverly Jeffers, and they agreed that Goodloe should not be hired in 1981 because he was found to have been growing marijuana.[16] Refusing to employ an individual because he grows or uses drugs, especially a refusal by a theatrical employer which has a strong and enforced policy prohibiting the possession or use of drugs, is a lawful exercise of responsibility under the National Labor Relations Act or any other act. The question remains as to whether this was the real reason that Goodloe was denied employment or whether it was merely the pretext for discriminatory activity stemming from other motives.

A year before Goodloe was denied employment for the 1981 season, he threatened to file NLRB charges. This threat did not result in a denial of employment. To the contrary, if we believe Goodloe, it produced the desired effect; namely, his continued employment at SPAC. His conversation with Diehl, the International president, in which he complained about his treatment by Universal, occurred after the beginning of the 1981 season, not before, and can hardly serve as the motivating factor for a decision by Local 592 which had been taken previously. With respect to Goodloe's repeated but unsuccessful attempts to join Local 592, these efforts took place over a period of years during which Goodloe continued to

[16] LaVigna testified that Goodloe had a reputation as a user of marijuana, and there is record evidence to support his belief.

work for SPAC with regularity. Moreover, Goodloe had been referred to Universal for a tour of employment in the spring of 1981, and LaVigna had obtained work for him in New York City, despite Goodloe's asserted "running dispute" with Local 592 respecting denial of membership. These acts do not suggest illegal motivation but suggest just the opposite.[17]

The weakness in Respondent's defense, namely, that Goodloe's widely publicized growing of marijuana was its motivating reason for denying him employment, is that his arrest for this crime and the denial of employment for such activity took place far apart in point of time. However, the same must be said for the events relied upon by the General Counsel to establish illegal motivation on the part of Local 592. While promptness of action is an element to be considered in evaluating genuineness of motive, the Board recently held that a 4-month delay between an act of picket line misconduct and the discharge was timely even though the dischargee had subsequently regained his old job. *Overhead Door Corp.*, 261 NLRB 657 (1982).

Respondent and SPAC should not be faulted because they wanted to let Goodloe down easy. LaVigna testified that, with the exception of his own son, he never fired anyone. His method of eliminating an undersirable employee was simply not to call him for work. In taking personnel actions, LaVigna was entitled to consider the long haul as well as the short haul. If it was less harsh, less disruptive to the total operation, and less likely to generate a heated confrontation to let a pot grower work out the balance of the 1980 season and then forget about him, LaVigna's decision should not be branded discriminatory because it was also charitable. I think these facts prompted LaVigna's method of eliminating Goodloe and I am not disposed to second-guess him for handling the matter as he did. Accordingly, I would dismiss the portion of the consolidated complaint which alleges that Respondent discriminatorily denied Goodloe referrals for employment at SPAC.

3. William A. Thomas

In evaluating the action of Respondent in not recalling Thomas in the 1981 season, its reasons are slim but, on the other hand, so is the evidence of the General Counsel supporting a discriminatory motive. Thomas was a longtime summer employee at SPAC who received progessively more crew calls as his seniority increased. His seniority was intruded upon in 1979 when Pat Carroll returned to work for SPAC but, without more credited evidence than the fact that Carroll was the son of former Union President Art Carroll, it cannot be established that Carroll's assignment of higher seniority was discriminatory, since his original employment antedated Thomas' original date of hire. Thomas was not a union member and his only application for membership took place in 1979, long before the 10(b) period began to run and a year before he received a full summer of employment at SPAC. In July 1980, he took up the cudgels for a fellow employee, Michael Cavotta, who he thought had been unfairly disciplined by LaVigna, and spoke up for Cavotta when the latter appealed his 1-week suspension to higher management. This event happened about the same time that Thomas admitted to taking beer without authorization from the SPAC storage room. The Cavotta incident was the only instance of union or concerted activities in which Thomas engaged at any time remotely proximate to the 1981 refusal of the Union to recall him. This incident was followed not only by Thomas' continued employment throughout 1980 but also by Art Carroll's referral of Thomas to the Universal job in February 1981, an action which suggests lack of animus on the part of Respondent rather than a desire to harbor a grudge.

By the summer of 1981, Thomas' circumstances had changed. He had graduated from law school and had passed the bar. He had every intention of establishing a law office and, by the time this case came on for hearing, he had done so.

It is undisputed that Thomas had requested LaVigna to call him during the 1981 season. It is also clear that SPAC, including Carlucci, had some questions as to Thomas' continued availability on short notice. Moreover, SPAC had instituted a new policy aimed at eliminating nepotism, and Thomas' brother worked, and continues to work, for SPAC during the summer. LaVigna's irritation at Thomas for taking beer without authorization bespeaks a more stringent attitude in respect to such shortcomings than was shared by higher management. However, when the matter of Thomas' continued employment was left to LaVigna's descretion, he apparently applied his own standards instead of those of his superiors. All of these asserted reasons, taken singly or together, do not present an overwhelming defense. However, the causal connection between LaVigna's action and any concerted protected activity on the part of Thomas is weaker still. Since it is the General Counsel who must prove a violation by a preponderance of the evidence, not Respondent who must justify its actions or suffer the consequences, I conclude that the General Counsel has failed to establish that, in 1981, William A. Thomas was denied employment because he engaged in union activities or concerted protected activities and hence I will recommend that his portion of the consolidated complaint be dismissed.

Upon the foregoing findings of fact and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Saratoga Performing Arts Center, Inc., and Universal City Studios, Inc., are, respectively, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent International Alliance of Theatrical and Stage Employees Local 592 is a labor organization within the meaning of Section 2(5) of the Act.

[17] The General Counsel argues that Respondent in this case was somehow responsible for the act of a Universal electrician shop steward—presumably a member of a California IATSE local—in denying Goodloe employment when Goodloe could not produce a union card. This argument carries the idea of vicarious responsibility rather far. Local 592 had no control over the steward in question. However, Local 592 did assist Goodloe in obtaining employment with Universal.

3. The General Counsel has failed to establish that Respondent violated Section 8(b)(1)(A) or (2) of the Act.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I make the following recommended:

ORDER[18]

The consolidated complaint herein is dismissed in its entirety.

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.